

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: William W. Ackerman, CPA, Budget & Finance Director/797-1050

PREPARED BY: William W. Ackerman, CPA, Budget & Finance Director/797-1050

SUBJECT: Resolution

AFFECTED DISTRICT: N/A

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE UTILITY MONITORING AGREEMENT WITH FLORIDA LEAGUE OF CITIES, INC.

REPORT IN BRIEF: Authorizes the Town to engage a telecommunications auditor to review the Town's recent utility bills to determine if any refunds or credits are owed to the Town and/or to make recommendations as to how the Town can lower future telecommunications bills. The telecommunications audit company works on a contingent fee basis and receives 45% of any refunds or credits received by the Town and 45% of any realized future savings for a twelve month period. If there are no refunds, credits, or realized future savings then there is no fee for the work done by Florida League of Cities, Inc. The firm being recommended has specialized knowledge of telecommunications rates, tariffs, and billing practices and has done similar work for numerous other governmental and non profit clients including City of Melbourne, City of Vero Beach, City of Altamonte Springs, and City of Winter Springs. The vendor has been chosen because of their extensive experience with other units of local governments and similar entities in the area. The fee is typical for this type of service.

PREVIOUS ACTIONS:

CONCURRENCES: The Town Attorney has reviewed the attached agreement with FLC, Inc.

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve the resolution

Attachment(s): Resolution and Exhibit “A”

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,
APPROVING THE UTILITY MONITORING AGREEMENT WITH
FLORIDA LEAGUE OF CITIES, INC.

WHEREAS, the Town desires to have its telecommunications bills reviewed to determine if the Town is being charged appropriately and to determine if there are any past overcharges owing to the Town and if there are any recommendations that may reduce future telecommunications cost; and

WHEREAS, Florida League of Cities, Inc. has successfully performed such services for other governmental and non profit entities; and

WHEREAS, Florida League of Cities, Inc. will perform these services for telephone services on a contingent fee basis.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby approves the utility monitoring agreement attached hereto as Exhibit "A" and authorizes any resulting expenditures to be charged to appropriate accounts.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2008.

EXHIBIT “A”
CONTRACT TO PROVIDE CONSULTING SERVICES
FOR TELECOMMUNICATIONS COST RECOVERY
AND/OR FUTURE SAVINGS TO THE TOWN OF DAVIE,
FLORIDA.

THIS CONTRACT, entered into this _____ day of _____, 2008, by and between Florida League of Cities, Inc. a Florida corporation (hereinafter referred to as “FLC”) and the Town of Davie, Florida, a Municipal Corporation organized under the laws of the State of Florida (hereinafter referred to “the Town”).

WHEREAS, the Town desires to engage FLC and its agents to review telecommunications vendor billings for the purpose of disclosing overcharges due to billing errors and/or identifying cost-saving strategies for the purpose of securing future savings,

NOW THEREFORE, the parties hereto mutually agree as follows:

1. **Employment of FLC.** The Town agrees to engage FLC and FLC agrees to perform the services as outlined herein. When used in this contract, the term “FLC” includes FLC and its agents, officers, subcontractors, and employees. For purposes of this contract, subcontractors shall mean CostChecks Auditing Services, LLC (CostChecks). It is understood that FLC may utilize one or more third parties to assist in providing such services.
2. **Scope of Services.** FLC will review the Town’s telecommunications billings to find sensible ways to reduce costs, such as identifying past and/or current overcharges, or proposing cost-savings actions or strategies to the Town. Upon finding any overcharges, FLC will work with the Town, providing information as needed, to help the Town secure from the vendor a reasonable and appropriate refund or credit for past overcharges, as well as a correction of current charges.

During the course of its work, FLC will use those audit measures it deems necessary and appropriate under the circumstances. The parties agree that a review by FLC, however diligent that review may be, cannot serve as a guarantee that all billing errors have been discovered or that all possible cost-saving strategies have been uncovered and proposed to the Town. The Town and FLC therefore agree that FLC will not be liable for undiscovered billing errors or cost-saving strategies.

A signed Letter of Authorization must accompany this Agreement on the Town’s letterhead, which enables FLC/CostChecks to obtain vendor records pertaining to this engagement.

3. **Time of Performance.** FLC’s services will commence within 30 days of notice

to proceed. Initial performance of service usually consists of filing Letters of Agency with appropriate vendors and obtaining Customer Service Records, when necessary. FLC will perform and complete its services as expeditiously as reasonably possible under the circumstances. Both parties recognize that delays by vendors and other obstacles may, from time to time, impede FLC from completing its services as quickly as it would intend.

4. **Confidentiality Agreement.** The Town and FLC agree that, if required, they will enter into a mutually acceptable confidentiality agreement protecting the confidentiality of certain proprietary information to the extent allowed by Florida Law and the Town's charter.
5. **Compensation.** The Town agrees to pay FLC forty five percent (45%) of any refund or credit it receives as a result of FLC's actions. The fee for refunds or credits is payable upon invoicing by FLC, subsequent to the Town's receipt of the refund or credit.

The Town also agrees to pay each month for twelve (12) months forty five percent (45%) of any monthly savings achieved as a result of FLC's actions, or the implementation of any FLC proposal.

Such savings shall be clearly documented in writing and may include, but are not limited to, cost reductions resulting from the correction of billing errors, rate or classification changes, changes in contract terms, changes in network configuration, and elimination of unwanted services.

If the Town incurs expenses in implementing any FLC proposal, the Town will not be required to pay fees owed to FLC until the Town first achieves an accrued cost-savings equal to the implementation costs. Thereafter, the twelve (12) month billing period referenced hereinabove shall begin.

To avoid unnecessary bookkeeping, and for the mutual convenience of the Town and FLC, any item of future savings which generates fees of twelve hundred dollars (\$1,200.00) or less will be payable in its entirety at the beginning of the 12-month period rather than in monthly increments throughout the 12-month term.

The proposals presented to the Town by FLC are meant to be sensible and beneficial. The parties agree that the Town is in the best position to judge those qualities of a cost-saving proposal. Accordingly, the Town is under absolutely no obligation to implement any proposal submitted by FLC and agrees to accept or reject any proposal within a reasonable time (not to exceed 45 days). If the Town rejects any proposal, the Town owes no fee for any savings that would have resulted from the rejected proposal. If, however, the Town implements the rejected proposal within eighteen (18) months, it agrees to pay FLC its full fee as stated above.

Any debits or charges to the Town for past under billings and/or any increases in future costs resulting from current or past under billings will not be deducted from any fee as defined above.

During the period of this audit agreement, should any in-house review, Town action, or any other vendor, business, or entity conduct a similar analysis or audit, FLC is still entitled to the above-stated fees for refunds, credits, or cost-savings realized by the Town.

Upon termination of this contract, if any amounts owing to FLC remain unpaid, or if an issue initiated or recommended by FLC remains unresolved, the Town agrees to compensate FLC as described above with regard to the unpaid amounts, as well as to the resolution of such issue. This provision is intended to allow for unavoidable delays caused either by the Town, telecom vendors, or regulatory and legal agencies which are outside of FLC's control.

6. **Method of payment.** FLC will compute fees as outlined in this contract and submit invoices to the Town for the correct amount. The Town agrees to pay all correct invoices within 30 days of receipt. All invoices not paid within 30 days of the invoice date will be subject to a monthly interest charge of 1½ percent of the unpaid balance.
7. **Changes.** Any changes in this contract must be incorporated into a written amendment and signed by both parties.
8. **Principal-Independent Contractor.** The relationship of FLC to the Town shall be that of an independent contractor. No other employer-employee relationship between the parties is created by this contract. By entering into this contract with the Town, FLC and the Town acknowledge that FLC will, in the performance of its duties and under this contract, be acting as an independent contractor and that no officer, independent contractor or employee of FLC or the Town will be for any purpose an employee of the other and that no officer, independent contractor, employee of FLC is entitled to any of the benefits and privileges of a Town employee or officer under any provision of Florida law.
9. **Services and Materials to be Furnished by the Town.** The Town agrees to make available to FLC copies of bills, contracts, and other such materials as may be reasonably requested to carry out the duties of this contract in an excellent manner. FLC may make reasonable requests for a temporary work space or for the periodic assistance of an employee. Since the Town wishes for FLC to be successful in its efforts, it agrees to fulfill such requests to the extent it can reasonably do so.

10. **Indemnification.** Each party shall be responsible, in accordance with Florida law, for its own acts, and will be responsible for all damages, costs, fees, and expenses which arise out of the performance of this contract and which are due to that party's own negligence, tortious acts and other unlawful conduct and the negligence, tortious acts and other unlawful conduct of its respective agents, officers, and employees. In the absence of negligence, tortious acts and other unlawful conduct in FLC's performance hereunder, the Town shall, to the extent permitted under Florida law, defend, indemnify and hold FLC free and harmless from and against any claims, demands, or action brought by third parties which are related in any way to the Town's implementation of FLC proposals.
11. **Limitations of Liability.** The Town agrees that FLC's total aggregate limit of liability to the Town hereunder (whether contract, statutory, in tort, or otherwise) for damages on any one or more or all claims (regardless of the number of different or other claims, claimants, or occurrences) shall not exceed the total of professional fees paid under this contract. The Town agrees that FLC shall not be liable to the Town for any indirect, incidental, special, or consequential damages, any lost profits or any claim or demand against the Town by any other party, arising out of or in connection with the performance of services hereunder.
12. **Matters to be Disregarded.** The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.
13. **Completeness of Contract.** This contract and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto.
14. **Applicable law.** This contract shall be governed by and construed in accordance with the laws of the State of Florida.
15. **Notices.** Any notices, bills, invoices, or reports required by this contract shall be sufficient if sent by the parties in the United States mail, postage paid, to the address shown below:

Gary Shimun, Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

Mr. Ken Small
Technical Services Manager
Florida League of Cities
P.O. Box 1757
Tallahassee, FL 32302-1757

IN WITNESS WHEREOF, the Town and FLC have executed this contract as of the date first written above.

TOWN OF DAVIE, FLORIDA
INC.
A Florida Municipal Corporation

FLORIDA LEAGUE OF CITIES,
A Florida Not-for-Profit Corporation

By:_____

By:_____